

**ROGER RUSS**  
**THREE-LOT MINOR SUBDIVISION AND THREE VARIANCE REQUESTS**  
**STAFF REPORT FOR PLANNING BOARD**

**CASE PLANNER:** Tristan Riddell *TR*

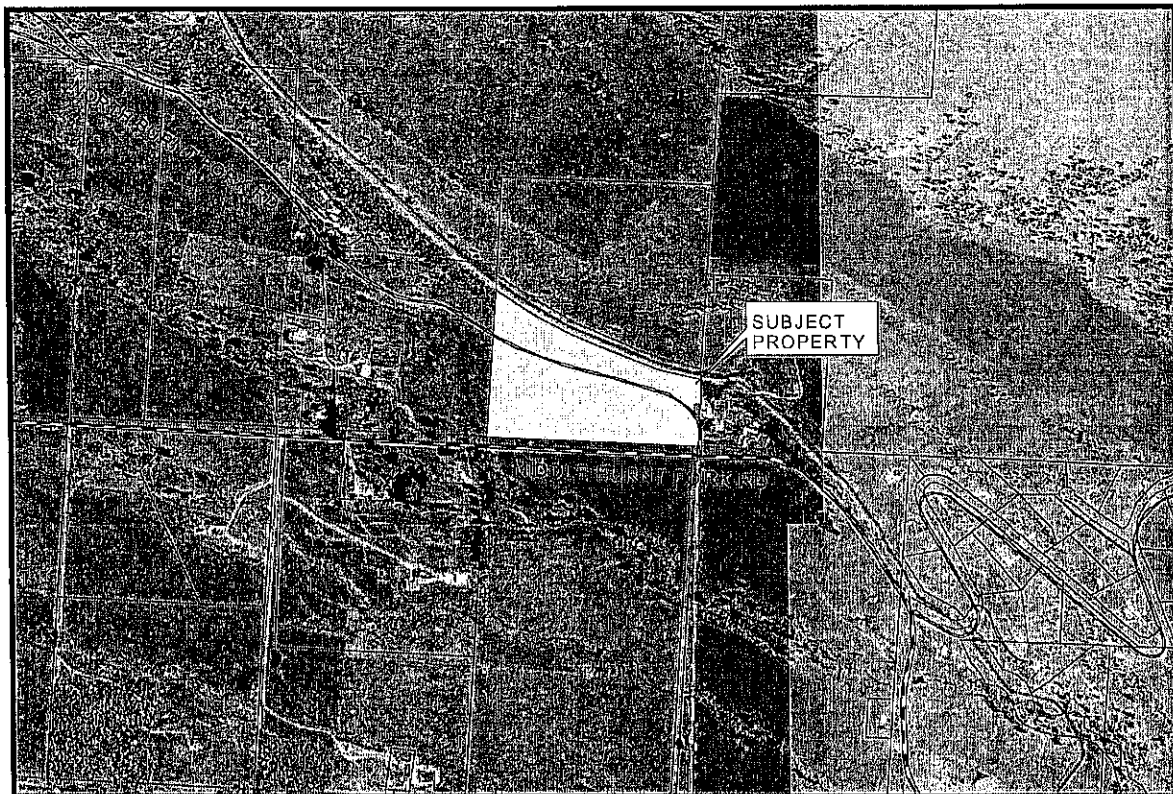
**REVIEWED/  
APPROVED BY:** Renee Van Hoven *RV*

**PUBLIC MEETING:** Planning Board Public Hearing: March 21, 2007  
Deadline for recommendation to BCC: April 18, 2007  
BCC public meeting (tentative): 9:00am April 24, 2007  
Deadline for BCC action (35 working days): May 9, 2007

**APPLICANT OWNER:** Roger Russ  
131 Holland Road  
Lopez Island, WA 98261

**REPRESENTATIVE:** Professional Consultants , Inc., John Kellogg  
1713 N. 1<sup>st</sup> Street  
Hamilton, MT 59840

**LOCATION OF REQUEST:** The property is located east of Stevensville at the intersection of North Burnt Fork Road and Middle Burnt Fork Road. (Map 1)



**Map 1: Location Map**  
(Data Source: Ravalli County Planning Department)

**LEGAL DESCRIPTION  
OF PROPERTY:**

Tract B, certificate of survey 516643 located in the SE1/4 of Section 29, T9N, R19W, P.M.M., Ravalli County, Montana.

**APPLICATION  
INFORMATION:**

The subdivision and variance applications were determined complete on February 28, 2007. Agencies were notified of the subdivision and variance requests and comments received by the Planning Department that are not in the application are Exhibits A-1 through A-7 of the staff report.

**LEGAL NOTIFICATION:**

A legal advertisement was published in the Ravalli Republic on Tuesday, March 6, 2007. Notice of the project was posted on the property and adjacent landowners were notified by certified mail postmarked March 1, 2007. No public comments have been received to date.

**DEVELOPMENT  
PATTERN:**

Subject property	Open
North	Agricultural
South	Agricultural
East	Agricultural and Residential
West	Agricultural

**INTRODUCTION**

Roger Russ is a three-lot minor subdivision proposed on 22.85 acres. The property is located approximately 4 miles east of Stevensville at the intersection of Middle Burnt Fork Road and North Burnt Fork Road. It is located in the Stevensville School District and the Stevensville Rural Fire District. The parcel is currently vacant. North Burnt Fork Creek is located approximately 100 feet southwest of the property. The Planning Board deliberated and recommended approval of the subdivision on September 6, 2006 (Planning Board hearing minutes Exhibit A-1).

In conjunction with the subdivision proposal, the applicant is requesting variances from the following Sections of the Ravalli County Subdivision Regulations:

- Section 5-2-2(c)(6), which requires that all lots are served off an internal road. The Planning Board deliberated on and approved this variance request at the September 6, 2006 Public Hearing.
- Section 5-4-5(b)(2), which requires internal subdivision roads to be improved to meet County standards. Because North Burnt Fork Road bisects the subject property it is considered a road internal to the subdivision.
- Section 5-2-2(a)(3), which requires that no lot be bisected by a public right-of-way. The subject property is currently bisected by North Burnt Fork Road.

*Staff is recommending conditional approval of the subdivision and the variance requests.*

RAVALLI COUNTY PLANNING BOARD

MARCH 21, 2007

ROGER RUSS

THREE-LOT MINOR SUBDIVISION AND THREE VARIANCE REQUESTS

**RECOMMENDED MOTION**

1. That the variance request from Section 5-2-2(c)(6) be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.
2. That the variance request from Section 5-4-5(b)(2) be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.
3. That the variance request from Section 5-2-2(a)(3) be **approved**, based on the findings of fact and conclusions of law in the staff report.
4. That the Roger Russ Minor Subdivision be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

**RECOMMENDED MITIGATING CONDITIONS OF APPROVAL FOR THE SUBDIVISION AND VARIANCE REQUESTS**

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

***Notification of Proximity to Agricultural Operations.*** This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. (*Effects on Agriculture*)

***Notification of Severe Soils.*** Within this subdivision there are areas of the property identified as potentially having soils rated as severe for road construction and building sites. The approximate locations of these areas can be found on a reduced copy of the final plat and descriptions of the severe soils in question which are included as exhibits to this document (the applicant shall include the exhibits as attachments). (*Effects on Public Health and Safety*)

***Notification of Irrigation Ditch/Pipeline Easements.*** Within this subdivision there are irrigation easements. All downstream water right holders have the right to maintain and repair their ditches/pipelines and diversion structures whenever necessary to keep them in good condition. The filed subdivision plat shows irrigation easements on the property. All downstream users must approve any relocation or alteration (i.e. installation of a culvert) of an irrigation ditch or pipeline. Any act which damages or destroys a ditch/pipeline, interferes with its operation or maintenance in any way, or restricts access to the ditch/pipeline so as to interfere with its maintenance is expressly prohibited. The downstream water right holders have the right to use the easement to maintain the ditch or pipeline. (*Effects on Agricultural Water User Facilities*)

***Notification of No-Build/Alteration Zone.*** Within this subdivision there is a no-build/alteration zone in the western portions of Lots 2 and 3, as shown on the plat, to restrict

building within 500 feet of the ordinary high water mark North Burnt Fork Creek. There is also a no-build/alteration zone on the slopes greater than 25% on Lots 1 and 3. No new structure, with the exception of fences, may be constructed in this area and the vegetation shall be retained in its natural condition. (*Effects on Natural Environment and Public Health and Safety*)

**Notification of Proximity to North Burnt Fork Creek.** This subdivision is located in close proximity to North Burnt Fork Creek. There is an inherent hazard associated with creeks, due to potential soil erosion, flooding and movement of the creek channel. It is recommended that property owners of this subdivision obtain flood insurance. (*Effects on Public Health and Safety*)

**Limitation of Access onto a County Road.** A "no ingress/egress" restriction is located along the Middle Burnt Fork Creek Road and North Burnt Fork Creek Road frontages of the subdivision, which precludes vehicular access onto this County-maintained road, excepting the approaches, as approved by the Ravalli County Road and Bridge Department. This limitation of access may be lifted or amended with approval of the County. (*Effects on Local Services & Effects on Public Health and Safety*)

2. Protective covenants for this subdivision shall be submitted with the final plat that include the following provisions:

**Living with Wildlife.** (See Exhibit A-2 for required provisions.) (*Effects on Agriculture and Wildlife and Wildlife Habitat*)

**Primary Heat Source.** The primary heat source for the newly constructed residences in this subdivision shall be at least 75% efficient. (*Effects on Natural Environment*)

**Lighting for New Construction.** Full cut-off lighting shall be required for any new construction within this subdivision. A full cut-off fixture means fixtures, as installed, that are designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light is emitted. The source of light is fully shielded, top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. Spotlighting of flag poles shall be permitted. (*Effects on Public Health & Safety*)

**Control of Noxious Weeds.** Lot owners shall control the growth of noxious weeds on their respective lot(s). (*Effects on Natural Environment*)

**Radon Exposure.** The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. (*Effects on Public Health and Safety*)

**Flood Hazard Zone for Burnt Fork Creek.** All structures within this subdivision shall be built with a first floor elevation at least 2 feet above the existing grade. (*Effects on Public Health and Safety*)

**Amendment.** The covenants filed with the final plat shall state that written governing body approval shall be required for amendments to provisions of the covenants listed above, that are required to be included as a condition of subdivision approval. *(Effects on all six criteria)*

3. The subdividers shall include an RSID/SID waiver in a notarized document filed with subdivision plat that states the following: Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners and any successors in interest to any future RSID/SID, based on benefit, for a community wastewater system, community water system, or upgrading roads leading to or within the subdivision, including but not limited to paving, curbs and gutters, non-motorized transportation facilities, street widening, and drainage facilities. *(Effects on Local Services)*
4. The applicants shall provide evidence that a financial contribution (to be decided by the Board of County Commissioners in consultation with the Planning Board and the developer) has been contributed to the Stevensville School District prior to final plat approval. *(Effects on Local Services)*
5. The applicant shall provide a letter from the Stevensville Rural Fire District stating that they have provided the required 1,000 gallons per minute water supply or 2,500 gallons per lot water storage for fire protection for each lot within this subdivision. Alternatively, the applicant may provide evidence of a \$500 contribution made to the Stevensville Rural Fire District with the final plat submittal in lieu of the required water supply or water storage for fire protection. *(Effects on Local Services & Effects on Public Health and Safety)*
6. The subdivider shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. *(Effects on Public Health and Safety)*
7. The final plat shall show a no ingress/egress zone along the Middle Burnt Fork Road and North Burnt Fork Road frontages of the subdivision, excepting the approaches, as approved by the Road and Bridge Department. *(Effects on Local Services & Effects on Public Health and Safety)*
8. A no-build/alteration zone extending 500 feet from the ordinary high water mark of North Burnt Fork Creek shall be shown on the final plat. A no-build/alteration zone shall also be shown on the slopes greater than 25% on the final plat, as shown on the preliminary plat. *(Effects on the Natural Environment, Wildlife and Wildlife Habitat, & Public Health and Safety)*
9. The notification of a flood hazard zone as shown on the preliminary plat shall be placed on the final plat. *(Effects on Public Health and Safety)*
10. The subdivider shall provide evidence with the final plat submittal that dust abatement has been applied and the pro rata share has been paid for the portion of North Burnt Fork Road within the subdivision prior to final plat approval. *(Effects on Local Services and Variance 2)*



## **SUBDIVISION REPORT**

### **COMPLIANCE WITH PRIMARY SUBDIVISION REVIEW CRITERIA**

#### **CRITERION 1: EFFECTS ON AGRICULTURE**

##### **Findings of Fact:**

1. According to the application, the property is not currently being used for agriculture.
2. There are no soils on the property that are listed as Prime Farmland Soils or Farmland of Statewide Importance by the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS).
3. The property is located in an area where there is a mix of agricultural and residential uses. To mitigate impacts on nearby agricultural practices, a notification of agricultural operations shall be filed with the final plat and the covenants shall include a provision requiring owners to control domestic pets. (*Conditions 1 & 2 – in Living with Wildlife section*)

##### **Conclusion of Law:**

With the mitigating conditions, impacts of this subdivision on surrounding agricultural practices will be minimized.

#### **CRITERION 2: EFFECTS ON AGRICULTURAL WATER USER FACILITIES**

##### **Findings of Fact:**

1. The application states there are DNRC water rights associated with this property and the applicant is not proposing to divide the rights among the proposed lots. The application does not specify which of the lots will retain the water rights.
2. There are two existing irrigation ditches traversing the property. The southernmost ditch has an existing 20-foot wide easement and the applicant has proposed a 20-foot wide easement for the ditch traversing the middle of the property.
3. To notify future property owners and mitigate potential impacts on agricultural water user facilities, a notification of the irrigation ditches and easements shall be filed with the final plat. (*Condition 1*)
4. Section 3-3-4(a)(24) of the RCSR requires that the subdivider provide written documentation showing how the water rights are to be divided (must be notarized in order to record with the Clerk & Recorder) or written documentation indicating that the water rights will be removed from the property.
5. Section 3-3-4(a)(25) of the RCSR requires that the subdivider provide a notarized statement from all downstream irrigation users if any irrigation ditches are to be altered, (e.g. installation of culverts, bridges, etc.) or relocated.

##### **Conclusion of Law:**

Impacts to agricultural water user facilities will be minimized through the mitigating condition and requirements of final plat approval.

#### **CRITERION 3: EFFECTS ON LOCAL SERVICES**

##### **Findings of Fact:**

1. The applicant is required to pay the pro-rata share of the cost to improve the substandard portions of North Burnt Fork Road and Middle Burnt Fork Road that lead to the subdivision from Eastside Highway.
2. North Burnt Fork Road is technically within the subdivision and is subject to Section 5-4-5(b)(2), which requires that roads serving three to five lots are improved to meet county standards. The applicant is requesting a variance from this Section. Staff is recommending

- approval of this request with the conditions that, the applicant, pay the pro rata share and apply dust abatement. (*Variance 2*)
3. Section 5-2-2(c)(6) of the RCSR requires that all lots within the subdivision are served off an internal road. The applicant has requested a variance and is proposing individual driveways off North Burnt Fork Road to serve Lots 1 and 3, and a driveway off Middle Burnt Fork to serve Lot 2. The Ravalli County Road and Bridge Department (RCRBD) has granted preliminary approach permits for individual accesses to each lot (*Application*). Staff is recommending approval of this variance request (*Variance 1*). Approved approach permits from the RCRBD are a requirement of final plat approval (Section 3-3-4(a)(17)).
  4. There is an existing private access easement which traverses Lots 1 and 3. This easement will continue to be used as provided for in Recorded Easement #537743 (*Exhibit A-3*) and is required to be shown on the final plat (*Appendix E*).
  5. To limit access onto Middle Burnt Fork Road and North Burnt Fork Road and to mitigate impacts on local services, the final plat shall show a non ingress/egress zone along both road frontages, excepting the approaches, as approved by the RCRBD. A notification of this limitation of access shall also be included in the Notifications Document. (*Conditions 1 & 7*)
  6. Individual wells and septic systems are proposed to serve the lots. (*See Natural Environment*)
  7. To mitigate potential impacts of this subdivision on any possible future public water, sewer system, or improvements to the road system, the RSID/SID waiver filed with the final plat shall address these services/facilities. (*Condition 3*)
  8. Bitterroot Disposal provides service to this site.
  9. The applicants stated they are willing to make a contribution to the Stevensville School District, but did not specify an amount.
  10. In a letter dated August 17, 2006, the Stevensville School District stated that they district could handle the additional potential increase in school aged children caused by the subdivision. (*Exhibit A-4*) To mitigate impacts on local services, the subdivider shall contribute an amount (to be determined by the BCC in consultation with the Planning Board and developer) per lot to the School District prior to final plat approval. (*Condition 4*)
  11. The Stevensville Rural Fire District has not provided comments, but usually recommends that the applicant provide the water supply requirements adopted under the Uniform Fire Code or a \$500 per lot contribution, which will mitigate impacts on local services and public health and safety. (*Condition 5*)
  12. Adequate public services are available to the subdivision.
  13. The Ravalli County Sheriff's Office provides law enforcement services to this area.

#### Conclusion of Law:

With the conditions of approval and requirements of final plat approval, impacts of the subdivision on local services will be mitigated.

#### **CRITERION 4: EFFECTS ON THE NATURAL ENVIRONMENT**

##### Findings of Fact:

1. The property is located approximately 100 feet northeast of North Burnt Fork Creek, which drains an area of 15 square miles or more. The property is separated from North Burnt Fork Creek by Middle Burnt Fork Road, so a floodplain analysis waiver was granted by the Ravalli County Floodplain Administrator. (*Application*)
2. To mitigate impacts on the natural environment, specifically North Burnt Fork Creek, a no-build/alteration zone shall be shown on the final plat on Lots 2 and 3, as shown on the preliminary plat (*Application*). The no build/ no alteration zone should extend horizontally 500 feet from the ordinary high water mark of North Burnt Fork Creek. (*Condition 8*) To mitigate impacts on the natural environment, a notification of the no build/no alteration zone shall be included with the Notifications Document. (*Condition 1*)



3. Individual wells and wastewater treatment systems are proposed to serve the lots within the subdivision and adequate information has been provided to the Environmental Health Department for local subdivision review to occur. (*Exhibit A-5*) A Certificate of Subdivision Plat Approval from Montana DEQ is required to be submitted with the final plat.
4. To mitigate air pollution resulting from home heating emissions, protective covenants shall be filed with the final plat stating that the primary heat source for any newly constructed residences must be at least 75% efficient. (*Condition 2*)
5. An approved noxious weed and vegetation control plan is required to be filed with the final plat. According to MCA 7-22-2152, any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, the plan shall be submitted to the weed board for approval by the board. (*Condition 2*)

Conclusion of Law:

Impacts from this subdivision on the natural environment will be minimized with the requirements of final plat approval and imposition of mitigating conditions.

**CRITERION 5: EFFECTS ON WILDLIFE AND WILDLIFE HABITAT**

Findings of Fact:

1. The property is not located within the Montana Fish, Wildlife, and Parks (FWP) identified big game winter range and there are no species of special concern listed in the vicinity of the property.
2. FWP requested that living with wildlife provisions be included in the covenants to mitigate impacts on wildlife and wildlife habitat. (*Exhibit A-2*) (*Condition 2*)
3. To mitigate impacts on the natural environment, a notification of the no build/no alteration zone shall be included with the Notifications Document. (*Condition 1*)

Conclusion of Law:

With the conditions of approval, the proposed subdivision will likely have a minimal impact on wildlife.

**CRITERION 6: EFFECTS ON PUBLIC HEALTH AND SAFETY**

Findings of Fact:

1. The applicant is requesting a variance from the requirement that all lots are served off an internal road and is instead proposing an individual access for Lot 2 (*Variance 1*). The RCRBD has granted the subdivider three preliminary approach permits (application) for the proposed driveways. Staff is recommending approval of the variance request.
2. The preliminary plat and soils map indicates there are soil types on the property that are considered severe for construction of roads and/or buildings. To mitigate potential impacts on public health and safety, a notification of severe soils shall be in the Notifications Document filed with the final plat. (*Condition 1*)
3. The subject property is located within the designated Burnt Fork Creek 100 year alluvial fan flood hazard zone as determined by the U.S. Army Corps of Engineers for Montana DNRC. To mitigate any detrimental effects associated with construction in the flood hazard zone, the applicant shall place a notification on the final plat that all structures within the subdivision shall be built with their first floor elevation at 2 feet above the existing grade, as shown on the preliminary plat and a provision regarding the restriction shall be included in the covenants. (*Conditions 2 & 9*)

4. To mitigate impacts on public health and safety, specifically dealing with North Burnt Fork Creek, a notification of proximity to North Burnt Fork Creek shall be included in the Notifications Document. (*Condition 1*)
5. To mitigate impacts on public health and safety, specifically North Burnt Fork Creek, a no-build/alteration zone shall be shown on the final plat on Lots 2 and 3, as shown on the preliminary plat. The no build/alteration zone should extend horizontally 500 feet from the ordinary high water mark of North Burnt Fork Creek. A notification of the no-build/alteration zone within 500 feet of the ordinary high water mark of North Burnt Fork Creek shall be included with the Notifications Document. (*Conditions 1 & 8*)
6. To mitigate impacts on public health and safety, the subdivider shall apply for County-issued addresses and a provision requiring property owners to post County-issued addresses at their driveways shall be in the covenants. (*Condition 6*)
7. To limit access onto Middle Burnt Fork Road and North Burnt Fork Road and to mitigate impacts on local services, the final plat shall show a non ingress/egress zone along both road frontages, excepting the approaches, as approved by the RCRBD. A notification of this limitation of access shall also be included in the Notifications Document. (*Conditions 1 & 7*)
8. Lots 1 and 3 have slopes greater than 25% and the applicant is proposing a no-build/alteration zone on the steep slopes. The no-build/alteration zone(s) are required to be shown on the final plat.
9. North Burnt Fork Road, a County-maintained public right-of-way bisects Lots 1 and 3. Section 5-2-2(a)(3) restricts the creation of lots when they are bisected by a public right-of-way. The portion of Lots 1 and 3 to the north of the public right-of-way will be designated as no-build/alteration zones due to the presence of slopes greater than 25%. Due to the size of the parcels and the steep slopes to the north of North Burnt Fork Road, the granting of Variance #3 will have no negative impacts on public health and safety. (*Variance 3*)
10. The proposed subdivision is located within the Stevensville Rural Fire District and with Condition 5 impacts to the District will have been addressed.
11. To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision requiring full cut-off lighting with the exception of flag poles. (*Condition 2*)
12. There is a prevalence of radon in the County and to mitigate impacts on public health and safety, the covenants shall include a statement regarding radon exposure. (*Condition 2*)
13. With the conditions and requirements of final plat approval, access to the subdivision will be adequate for public health and safety. (*Effects on Local Services and Conditions 1 & 7*)

Conclusion of Law:

The mitigating conditions and requirements of final plat approval will address impacts on public health and safety.

**COMPLIANCE WITH:**

**1) THE SURVEY REQUIREMENTS PROVIDED FOR IN PART 4 OF M.C.A. 76-3.**

Finding of Fact:

The Seal of a Professional Land Surveyor or Engineer is required on all final plats, which states that the subdivision complies with part 4 of M.C.A. 76-3.

Conclusion of Law:

This proposal meets the survey requirements or conditions have been required to bring the proposal into compliance.

**2) THE LOCAL SUBDIVISION REGULATIONS PROVIDED FOR IN PART 5 OF M.C.A. 76-3.**

Finding of Fact:

Subdivisions are required to comply with the local subdivision regulations provided for in part 5 of M.C.A. 76-3.

Conclusion of Law:

The developer has submitted a plan which complies with the requirements of local subdivision regulations or conditions have been required that will bring the plan into compliance.

**3) THE LOCAL SUBDIVISION REVIEW PROCEDURE PROVIDED FOR IN THE RAVALLI COUNTY SUBDIVISION REGULATIONS**

Findings of Fact:

1. Subdivisions are required to comply with the local subdivision review procedure provided for in the Ravalli County Subdivision Regulations.
2. A decision of the governing body rejecting or approving a proposed subdivision may be appealed to the district court within thirty (30) days of such decision. The petition shall specify the grounds upon which the appeal is made. An appeal may be made by the subdivider; a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the unincorporated area of the county that can show a likelihood of material injury to the landowner's property or its value; a first class municipality if the subdivision is within three miles of its limits, a second class municipality if a subdivision is within two miles of its limits, a third class municipality or town if the subdivision is within one mile of its limits. An aggrieved party means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

Conclusion of Law:

This development plan proposal has followed the necessary application procedure and has been reviewed within the procedures provided in Chapter 3 of the Ravalli County Subdivision Regulations.

**CONSISTENCY WITH EXISTING ZONING AND COVENANTS**

Findings of Fact:

1. The proposal is consistent with the Interim Zoning Regulations.
2. There are no existing covenants on the property.

Conclusions of Law:

1. The property is in compliance with the Interim Zoning Regulations
2. There are no covenants associated with the subject property.

**PROVISION OF EASEMENTS FOR UTILITIES**

Finding of Fact:

1. The proposed subdivision will be served by Ravalli Electric Cooperative and Qwest Telephone. Utility easements are located within Middle Burnt Fork and North Burnt Fork Roads.
2. Utility certificates are a requirement of final plat approval.

Conclusion of Law:

Utility services will be available to this subdivision.

**PROVISION OF LEGAL AND PHYSICAL ACCESS**

**Finding of Fact:**

Physical and legal access for this subdivision is proposed via Middle Burnt Fork Road and North Burnt Fork Road, both of which are County-maintained roads. (*Local Services*)

**Conclusion of Law:**

With the conditions of approval and requirements of final plat approval, the proposal meets physical and legal access requirements.

## VARIANCE REPORT

### VARIANCE REQUEST #1

The applicant has requested a variance from Section 5-2-2(c)(6) of the Ravalli County Subdivision Regulations to allow the lots to access directly off Middle Burnt Fork Road and North Burnt Fork Road instead of an internal subdivision road.

### Compliance with Variance Review Criteria

#### **A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

##### Findings of Fact:

1. Section 5-2-2(c)(6) requires lots within this subdivision to access off an internal road if the road in which the lot fronts is a minor collector or higher. Middle Burnt Fork Road is classified as a minor collector.
2. Lot 2 will access off Middle Burnt Fork Road. Lots 1 and 3 will access off North Burnt Fork Road.
3. Preliminary Approach Permits for the three accesses have been approved by the RCRBD and are included in the application.

##### Conclusion of Law:

1. The Road Department has approved the access proposal.
2. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

#### **B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

##### Finding of Fact:

The property is accessed by two County-maintained roads. An internal road could be constructed off either road.

##### Conclusion of Law:

The conditions upon which the variance is requested are not unique to the subject property.

#### **C. Physical conditions, such as topography or parcel shape, prevents the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

##### Finding of Fact:

Neither topography or parcel shape play a role in determining the applicants ability to construct an internal road.

##### Conclusion of Law:

Physical and topographic conditions do not prohibit the applicant from constructing an internal road.

#### **D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.**

##### Findings of Fact:

1. Interim zoning does not have an effect on this variance request.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below.  
Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of

the variance request against these provisions.

**Countywide Goal 4:** Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.

**Countywide Policy 4.1:** Encourage development that will minimize or avoid additional costs to existing taxpayers.

**Countywide Policy 4.2:** Consider the cumulative impacts of development.

**Countywide Policy 4.5:** Developers will be responsible for providing the infrastructure necessary within the development such as community water, sewage treatment and roads. A system of "nexus and proportionality" will govern external infrastructure costs attributable to the developer.

- The RCRBD has preliminarily approved three driveways for the subject parcel (*application*). Each driveway will be constructed to specified standards by the RCRBD

Conclusions of Law:

1. Interim zoning does not apply to the variance request.
2. The Growth Policy supports the granting of this variance.

**E. The variance will not cause a substantial increase in public costs.**

Finding of Fact:

The applicant has paid for and received preliminary approach permits for three accesses. The applicant will be required to install the

Conclusion of Law:

Approval of the variance request will not affect public costs.

**VARIANCE REQUEST #2**

The applicant has requested a variance from Section 5-4-5(b)(2), which requires internal subdivision roads to be improved to meet County-standards as outlined in Table 5-4-2. North Burnt Fork Road traverses through the subdivision and is technically considered an internal road. North Burnt Fork Road is County-maintained, has a 60-foot wide easement, and has a gravel travel surface

**Compliance with Review Criteria**

**A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

Findings:

1. Road standards were established in the Subdivision Regulations for the purpose of protecting the public health and safety of Ravalli County residents (Section 5-4-1(5)). According to the Subdivision Regulations Section 5-4-5(a), all private and public roads leading to and within the subdivision shall meet or exceed the road standards as specified in Table 5-4-2. Section 5-4-5(b)(2) requires that the developer hard surface North Burnt Fork Road within the subdivision.
2. North Burnt Fork Road extends through the subject parcel from Middle Burnt Fork Road to the northernmost property boundary. The subdivision application states this is a County-maintained gravel road with a 24-foot travel surface. The application also states the road has two feet of shoulder width, borrow ditches, and a maximum grade less than 6%. The preliminary plat indicates the road right-of-way width is 60 feet in the vicinity of the subdivision.

3. The proposed subdivision will add 16 average daily trips to North Burnt Fork Road. Because the roadway is currently County-maintained and the small increase in average daily trips to the road, negative impacts to public health and safety will be minimal.
4. To mitigate impacts on public health and safety, staff recommends the subdivider apply dust abatement and pay the pro rata share on the portion of North Burnt Fork Road within the subdivision prior to final plat approval. (*Condition 10*)

Conclusion:

With the recommended mitigating conditions, impacts on public health and safety will be minimized.

**B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

Findings of Fact:

1. The subject property has been bisected by a public right-of-way dating back to at least 1899, as shown on Index 9 of Section 29, Township 9N, Range 19W, Ravalli County, Montana.
2. It is rare to find parcels that are bisected by County-maintained roads. The usual requirement for subdivisions accessed by County roads is to pay a pro-rata share on any substandard County roadway leading to the subdivision (Section 5-4-5 (d) of the RCSR).
3. North Burnt Fork Road is technically a road within the subdivision, but does not function as an internal subdivision road. It provides access to many other residents northwest of the subject property.

Conclusion of Law:

The conditions upon which the variance is requested are unique to the subject property.

**C. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

Finding of Fact:

There are no physical conditions that would prohibit the subdivider from complying with the Regulations.

Conclusion of Law:

The variance request does not meet this criterion.

**D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.**

Findings of Fact:

1. Interim zoning regulations do not apply to this variance request.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

**Countywide Goal 3: Protect air quality**

**Countywide Policy 3.2: Minimize dust and other air pollution by appropriate subdivision regulation.**

- The subdivision regulations require the hard surfacing of North Burnt Fork Road.
- The Ravalli County Board of Health has expressed concerns regarding air pollution caused by dust. (*Exhibits A-6 & A-7*)

- To mitigate impacts on air quality, the subdivider shall apply dust abatement and pay the pro rata share on the portion of North Burnt Fork Road within the subdivision prior to final plat approval. (*Condition 10*)

**Countywide Goal 4:** *Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.*

**Countywide Policy 4.1:** *Encourage development that will minimize or avoid additional costs to existing taxpayers.*

**Countywide Policy 4.5:** *Developers will be responsible for providing the infrastructure necessary within the development such as community water, sewage treatment and roads. A system of "nexus and proportionality" will govern external infrastructure costs attributable to the developer.*

- The applicant has requested a variance from the requirement that the road be reconstructed to meet the road design standards in the Ravalli County Subdivision Regulations.
- To mitigate impacts on air quality, the subdivider shall apply dust abatement and pay the pro rata share on the portion of North Burnt Fork Road within the subdivision prior to final plat approval. (*Condition 10*)

#### Conclusions of Law:

1. Interim zoning does not apply.
2. With the recommended conditions, the proposal does not appear to violate provisions in the Growth Policy.

#### **E. The variance will not cause a substantial increase in public costs.**

##### Findings of Fact:

1. North Burnt Fork Road is a County-maintained, substandard road.
2. The subdivision is projected to generate an additional 16 trips on North Burnt Fork Road.
3. To mitigate impacts on any potential costs to the County road system, the subdivider shall apply dust abatement and pay the pro rata share on the portion of North Burnt Fork Road within the subdivision prior to final plat approval. (*Condition 10*)

#### Conclusion of Law:

With the mitigating conditions, there will not be a substantial increase in public costs.

#### **VARIANCE REQUEST #3**

The applicant has requested a variance from Section 5-2-2(a)(3), which requires that no lot be bisected by a public right-of-way. The subject property is currently bisected by North Burnt Fork Road.

#### **Compliance with Variance Review Criteria**

##### **A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

##### Findings of Fact:

1. Section 5-2-2(a)(3) states that no lot shall be divided by a public road or right-of-way. Lots 1 and 3 are proposed to be bisected by North Burnt Fork Road.
2. The portions of Lots 1 and 3 to the north of the road will be designated as a no-build/alteration zone due to the presence of slopes greater than 25%.
3. To mitigate any impacts on public health and safety, the portion of the property north of the public right-of-way will be designated as a no-build/alteration zone. No structures will be



allowed and the vegetation will not be disturbed. With the mitigating condition the granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

Conclusion of Law:

There will not be negative impacts to public health and safety by granting this variance due to the geography of the land which is being bisected.

**B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

Finding of Fact:

It is uncommon for parcels within the County to be bisected by public rights-of way.

Conclusion of Law:

The conditions upon which the variance is requested are unique to the subject property

**C. Physical conditions, such as topography or parcel shape, prevents the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

Finding of Fact:

The subject parcel is currently recoded as Certificate of Survey 516643. The parcel has been bisected by the public right-of-way dating back as far as 1899, as shown on Index 9 of Section 29, Township 9N, Range 19W, Ravalli County, Montana.

Conclusion of Law:

Physical and topographic conditions do prohibit the applicant from meeting the strict letter of the Ravalli County Subdivision Regulations.

**D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.**

Findings of Fact:

1. The interim zoning regulations only pertain to minimum lot size.
2. There are no provisions within the Ravalli County Growth Policy that pertain to this variance request.

Conclusions of Law:

1. Zoning does not apply to this variance request.
2. The Growth Policy does not apply to this variance request.

**E. The variance will not cause a substantial increase in public costs.**

Finding of Fact:

This section does not apply to the subject variance request.

Conclusion of Law:

Approval of the variance request will not affect public costs.



**Ravalli County Planning Board  
Meeting Minutes for September 6, 2006  
7:00 p.m.**

**Commissioners Meeting Room, 215 S. 4<sup>th</sup> Street, Hamilton, Montana**

**Public Hearing**

**Roger Russ (Russ) Minor Subdivision and One Variance Request**

**Plat Evaluation**

**Sapphire Meadows (Kirschten) Major Subdivision and Two Variance Requests**

*This is a summary of the meeting, not a verbatim transcript. A CD of the meeting may be purchased from the Planning Department for \$5.00.*

**1. Call to order**

Dan called the meeting to order at 7:09 p.m.

**2. Roll Call (See Attachment A, Roll Call Sheet)**

**(A) Members**

Mary Lee Bailey (present)  
Dale Brown (present)  
Ben Hillicoss (absent – excused)  
Dan Huls (present)  
JR Iman (present)  
Chip Pigman (absent – excused)  
Les Rutledge (present)  
Lori Schallenberger (present)  
Gary Zebrowski (present)

Park Board Representative: Bob Cron (present)

**(B) Staff**

Jennifer De Groot  
Karen Hughes  
John Lavey  
Tristan Riddell  
Renee Van Hoven

**3. Approval of Minutes**

Dan asked if there were any corrections or additions to the minutes from August 16, 2006. Gary clarified a statement that Ben Hillicoss said he made regarding density zoning and corridor beautification. The minutes were approved as corrected by Gary.

**4. Amendments to the Agenda**

There were none.

5. **Correspondence**

There was none.

6. **Disclosure of Possible/Perceived Conflicts**

Lori recused herself from the Roger Russ Subdivision discussion and decision.

7. **Public Hearing**

(A) **Roger Russ (Russ) Minor Subdivision and One Variance Request**

- (i) Staff Report on the Subdivision Proposal: **Tristan Riddell** gave a PowerPoint presentation. He gave an overview of the proposal and stated Staff recommended denial of the variance and approval of the subdivision subject to 13 conditions in the Staff Report. He entered the Staff Report into the record. (See Attachment B, Roger Russ Subdivision Staff Report)

- (ii) Three Minute Rule Waivers

**Lee Yelin** of Water Rights, Inc., submitted a request to speak for 10 minutes to ask questions about irrigation issues. (See Attachment C, Lee Yelin Three Minute Rule Waiver)

**Dan** recommended granting the waiver. The Board agreed to grant 10 minutes of speaking time to Lee Yelin.

- (iii) Public Comment on the Subdivision

(a) **Persons in Favor**

**John Kellogg** of PCI explained that the subdivision is located on Middle Burnt Fork Road and North Burnt Fork Road and that most of the area is relatively flat. He noted that most of the utility lot is over 25% grade so the developer has proposed a no-build zone over most of Lot 4 and a 500-foot swath on North Burnt Fork Creek. He stated that the flow of North Burnt Fork Creek is limited because of culverts, but in the event of an overflow, the culvert will direct flow down Middle Burnt Fork Road.

He noted where the proposed accesses are located and noted his strong opposition to Staff's recommendation to deny the variance. He noted that the driveways the developer proposed are short, but if the variance is denied, the developer would have to punch a road across the irrigation ditch for central access. He observed that the proposed access is four to five miles up Middle Burnt Fork Road and development past the proposed subdivision is relatively sparse. He commented that an additional access off Middle Burnt Fork Road is not creating a hazard because the accesses are widely spaced.

He stated that if the variance is denied, the applicant will have to pay \$80,000 to \$100,000 to create an internal subdivision road, which will create a severe impact on the proposal to subdivide. He noted that other than the variance

recommendation by Staff, the developer agrees with the recommended conditions in the Staff Report.

He went through the six criteria for subdivision review. He noted that the subdivision will have a relatively small impact on agriculture, although the flat land was used for grazing and hay land off and on. He said that there will be no impacts on water user facilities and an irrigation ditch will still run through the property. He noted that the proposal is to divide irrigation rights to the three lots and all lots will have access to the irrigation ditch. He commented that the subdivision is within 4.5 miles of schools and fire protection. He doubted that the subdivision will have any impacts on the natural environment due to the character of the area, with low-density homes. He noted that there is no known critical wildlife habitat on or near the subdivision. He explained that there are no undue hazards from access to the BRID canal north of the property. He again stated his recommendation for approval of the variance and subdivision.

Gary asked how many accesses were proposed off Middle Burnt Fork Road.

John Kellogg said there was only one and stated that the developer received preliminary approval from the Road and Bridge Department for that access.

Gary asked the line of sight for the access.

John Kellogg answered that it is probably over 800 to 900 feet each direction from the south access.

(b) Persons Opposed

Lee Yelin, Water Rights, Inc., stated that he represents Diane Rupert and Thomas and Paul Kink. He noted that his clients are not against the subdivision, but have concerns and questions about the water rights. He said that the subdivision application contains a lot of inaccuracies. He noted that the irrigation ditch to the south of the property is owned by the Kinks. He explained that the southern ditch could never have flooded or irrigated the property in question. He said that an area in the center of the lot is a return-flow. He noted that the Russ' have water rights out of North Burnt Fork Creek and asked that they note that on the irrigation plan. He asked how the developer could say that each lot would receive 1/3 of the water rights, when the property has not used water rights in 20 years. He said he wants to protect Diane's water right, which is dated 1852. He noted that she runs out of water every year.

(c) Rebuttal

John Kellogg said he never intended to use the ditch on the southwestern corner. He noted that historically, they had used the central ditch for irrigation, but they could subordinate that right if someone else owns it.

Lee Yelin commented that he is not saying the subdivision cannot use the return flow, however he prefers them to reuse the old ditch than take spring waste and seepage water.

**John Kellogg** asked where the ditch originates and said he believes they can work out an agreement.

**Lee Yelin** said that as long as the developers do not take his clients' water rights, they will not have a problem.

**Joede Vanek** said that he owns 33 acres above the subdivision on the hill and is concerned about the non-buildable utility lot. He asked if the lot will turn into a dead storage vehicle lot or a junkyard. He noted that tracts in the area range from 20 acres to 500 acres. He noted that although there is a large elk herd in this area, this subdivision will not affect it. He said that the 60-foot road easement on proposed Lot 4 goes to his parcel. He had thought about paving North Burnt Fork Road, but it was expensive. He said he hoped the Board would make the developer pave the road because the County will not. He offered that if the developer paved a portion of the road within the subdivision, he would discuss paving the rest of the road to his property.

(d) Close: Public Comment

(iv) Board Deliberation on the Variance Request (from building an internal road)

(a) Board discussion and questions

**Les** said he visited the lot this morning and noted that because of overgrown weeds, he could not tell if the ditch was more than just drainage. He asked if the ditch was a ditch or just a drainage.

**John Kellogg** said that it is a natural low area and used to transport irrigation water. He believed it had been excavated.

**Les** said that it could have been smoothed out. He voiced concerns about the high water table in the area and asked if the subdivision will use above-ground septic systems. He said he was also concerned that water will spread from the southeast to the northwest.

**John Kellogg** noted that the sites passed groundwater monitoring. He commented that two of the sites are shallow-capped systems. He noted that there is a channel where water flows through the center of property and it has been excavated in the past. He did not believe that water would spread and said that most of it would follow a channel through the property.

**Les** asked if Lots 1 and 2 were required to be above-ground sand mound septic systems.

**John Kellogg** noted that the systems were designed to match the depth of the groundwater. He said he did not have the DEQ application with him, but the Environmental Health Department granted approval of the systems.

**Bob** asked if the portion of North Burnt Fork Road which has to be improved has to be paved.

**Tristan** responded that it would.

JR asked the distance on the south side of the subdivision along Middle Burnt Fork Road and if they have proposed a non-ingress/egress zone for Lot 1.

John Kellogg answered that the distance is approximately 1300 feet and that all of Lots 1 and 2 were proposed with a non-ingress/egress zone except the driveway.

Dale asked if the developer understood that he has to pave North Burnt Fork Road.

Les noted that Condition 13 requires the internal road easement to be labeled as a public road and utility easement on the final plat.

Renee noted that there would need to be an additional internal road to serve Lot 2 to meet the requirement that all lots are served off an internal road.

Les said the Condition should be clarified.

John Kellogg said the developer is proposing short access driveways from existing roads and said that Staff's recommendation would create a bigger impact because of the internal road to be built. He said that shorter driveways create less impact and make the most sense. He noted that if the Board agreed with Staff, it would kick up the status of North Burnt Fork Road and they would have to pave the road or ask for a variance.

Bob noted that Staff has recommended paving of North Burnt Fork Road.

Dale said that if the developer could get with Joede Vanek, he could drop the road into Lot 2.

John Kellogg said that after the application was turned in, Staff spoke with the Deputy County Attorney and decided that Lot 4 is to be considered a unit, thus triggering pavement of North Burnt Fork Road. He noted that the developer and consultant were not aware of the issue or they would have asked for the variance before. He noted that the developer will have to request a variance. He noted that additional traffic will not be created by the utility lot. He commented that it was only in the Staff Report that the Road Department requested that all accesses be off North Burnt Fork Road, which triggers paving.

Les said that there is a downgrade from the roadbase to the property on North Burnt Fork Road. He said that if the driveways are not paved and traffic tries to enter onto North Burnt Fork Road, it presents a traffic hazard.

John Kellogg said that the approach permit from the Road Department would require some fill at that location and a raised access.

Les said his concern is that the Subdivision Regulations say the access has to be off a lower-grade road, which necessitates a new internal road and connection from Lots 1 and 3. He suggested having the internal road and North Burnt Fork Road paved.

**John Kellogg** noted that is what they are requesting a variance from and noted that costs increase significantly if the developer is required to pave any roads.

**JR** asked if the County has definitions or restrictions that permit Lot 4 from being built upon. He asked why the Board should recommend creation of the lot when it is for the convenience of the individual so he can leave it off the tax rolls.

**John Kellogg** said that Roger will probably sell the area to one of his adjoining neighbors. He said that the developer would probably agree to restrict unsightly storage. He noted that there is a building prohibition on the lot.

**JR** said that if the lot is not buildable because of 25% slopes, by definition, it is not buildable. He added that if it is not buildable, it is not part of the subdivision and there are only three lots being created.

**Renee** read the definition of "unit" from Chapter 2 of the Subdivision Regulations. She noted that the easement through the lot was used by BRID and because they are a commercial entity, the County Attorney's office said it was considered a unit.

**Joede Vanek** noted that there is gate at the bottom of the lot and BRID is not using that access.

**Lori** noted that one of the developer's neighbors had approached him about buying the land and if it was attached to another lot, he could not have sold it. She explained that the developer did not intend for the non-buildable lot to be counted as a lot and noted it would be more beneficial for neighbors to use the property.

**Paul Wilson** noted that BRID accesses the ditch off Iron Cap.

**Dan** said that the developer could cut costs by joining with Joede Vanek or by chip-sealing instead of paving.

**John Kellogg** said he had not heard of this requirement until tonight. He noted that the current variance request is from creating an internal road and allowing access of Lot 2 off Middle Burnt Fork Road. He noted that they will be requesting a variance from paving North Burnt Fork Road. He noted the developer's preference to have Lot 2 access off Middle Burnt Fork and the designation of Lot 4 as a non-commercial lot. He noted that under Staff's recommendation, all of North Burnt Fork Road would have to be paved.

**Les** asked if a hard-surfaced road would meet the requirements.

**Renee** said that all roads serving three to five units shall be hard-surfaced and meet County Standards.

**John Kellogg** said many residences use North Burnt Fork Road. He said that the developer will have to pave North Burnt Fork Road unless he asks for a variance.



**Mary Lee** noted that the requirement was for three to five lots, but there are only two lots using that access with the removal of Lot 4.

**Renee** explained that Staff sees Lot 4 as a commercial lot. She noted that up until now, they thought BRID used the lot and they will have to consult with the County Attorney to see if the lot can be excluded. She asked the Board not to consider that now.

**Les** said that because there are a number of things the Board does not know about and several approaches that would relieve the developer of costs, he asked for deferral of action on the variance.

**Dan** asked if the developer would consider withdrawing the application and resubmitting it.

**John Kellogg** said he prefers not to resubmit if the Board can resolve access to Lot 2. He said the paving question could be addressed later.

**Dale** said that David Ohnstad noted that granting the variance may be detrimental to public health and safety.

**Joede Vanek** said that if the variance is granted, the developers say they will not have to pave the road. He noted that paving is hanging on a variance. He acknowledged that the area is rural, but said it would be more dangerous to bring another driveway 600 feet from a major intersection. He noted that he has offered to pave part of North Burnt Fork Road from the beginning of his property up to his house. He recommended having all the subdivision traffic access off North Burnt Fork Road because it is more rural and less of a safety hazard.

**Tristan** noted that even if the Board grants the variance, North Burnt Fork Road will still have to be paved until there is a determination about Lot 4. He noted that as of now, there are three lots that access off the road.

**JR** noted that on Highway 93, people can still get an access if there is not another one for a quarter of a mile. He said that Tract 2 from its home site is at least 800 feet to the home site on North Burnt Fork Road and 75 feet from Middle Burnt Fork Road. He concluded that the developer should be able to receive an access off North Burnt Fork Road.

The Board went through the Five Criteria.

**JR** motioned to grant the variance based on the review criteria.

**Gary** seconded the motion.

(b) Board action

(1) Review of the Variance Request against the Five Criteria

1. The granting of the variance will not be substantially detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

Five Board Members agreed; one disagreed.

2. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Five Board Members agreed; one disagreed.

3. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

Five Board Members disagreed; one abstained.

4. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

Five Board Members agreed; one disagreed.

5. The variance will not cause a substantial increase in public costs.

Five Board Members agreed; one disagreed.

(See Attachment D, Roger Russ Five Criteria Review Sheet)

## (2) Board Decision

The vote was called; the members voted (5-1) to approve the Variance. (See Attachment E, Roger Russ Variance Vote Sheet)

## (v) Board Deliberation on the Subdivision Proposal

### (a) Board discussion and questions

**Gary** affirmed that since Lot 4 is classified as a unit, the internal road would need to be paved and that if the subdivision was approved tonight, it would require paving or a variance request.

**JR** asked if Vanek's access is his only access and if it was legal.

**Joede Vanek** noted it was his only access.

**JR** asked if it is specifically across BRID property and if BRID owns the canal in that area.

**Joede Vanek** said he thinks it does and noted that BRID created a split in the property.

**Dan** asked if Vanek had a recorded easement for his driveway.

**Joede Vanek** said he does and it is in the north where the driveway starts.

Karen noted that Staff just heard there is a recorded easement they do not have a record of to date.

John Kellogg said that what they are talking about is an easement across BRID, which is not part of the subdivision.

Joede Vanek noted that the easement is a 60-foot public road and utility easement.

Renee noted that Staff understood it was a private easement to BRID because that is what the preliminary plat states.

Karen noted that if the lot and something else is accessing the easement, then it is considered a road.

JR motioned that the Board believes Lot 4 is not a buildable lot and does not meet the definition of "unit" according to Subdivision Regulations in place today.

Gary noted that the other part of the definition says it is not for commercial use, which is why James McCubbin said it should be considered a unit. He noted that it is not buildable because of the slope, but the commercial use issue has not yet been resolved.

Dan noted that according to testimony, the gate is locked and there are other means for BRID access.

JR said the smartest thing to do is have two motions. He said that according to the current definition, Lot 4 is not a buildable lot under County regulations. He noted that if he owned an easement, he would not give it up even if he did not use it. He noted that the BRID canal is not commercial.

Gary said he believed the commercial lot should be resolved by attorneys.

JR motioned that Lot 4 should not be considered buildable at this time according to the definition of "unit."

Dale seconded the motion.

The vote was called; the Board unanimously approved the motion.

Les said that according to the Subdivision Regulations, there should not be confusion because the lot is commercial by definition.

Gary said that the Board was told it was not being used commercially, so he asked for clarification.

Les motioned approval of the subdivision with the exclusion of Conditions 8 and 13, that the contribution to the Stevensville School District be \$250 per unit prior to final plat approval and the contribution to the Fire Department be \$500 per unit prior to final plat approval.

Gary seconded the motion.

(b) Board action

(1) Review of Subdivision Proposal against the Six Criteria

The Board did not review the Six Criteria beyond their discussion and findings with the Staff Report.

(2) Board Decision

The vote was called; the members voted (6-0) to approve the Subdivision.  
(See Attachment F, Roger Russ Subdivision Vote Sheet)

8. Close Public Hearing

9. Plat Evaluation

(A) Sapphire Meadows (Kirschten) Major Subdivision and Two Variance Requests

(i) Presentation by Gordon Sorenson, Gordon Sorenson Engineering

**Gordon Sorenson** said he was the agent for Joe and Nadia Kirschten. He noted the proposal was to take 30 acres on Stevensville Airport Road and turn it into 15 two-acre lots. He said that in the past, the land was used for pasture and hay and was irrigated, but Mr. Kirschten sold the water rights back to the ditch company, retaining a two-acre water right for Lot 1. He noted that an irrigation ditch on the south side of the property will not be affected, and the ditch that runs on the west property line will serve the lot with water rights, so an easement from the other ditch will not be needed. He purported that the building sites are all suitable. He noted that the site passed groundwater monitoring. He explained that DEQ is waiting on comments from the Public Hearing. He said that two variances are requested: one for a flag lot and the other for an internal road. He said that the flag lot is not being created to avoid road construction. He said that Lot 2 is the former home of the Kirschtens, who built a new home and want to give Lot 2 to their daughter. He noted that the house and outbuildings are oriented to a west access and the 30-year-old driveway is intended to be left intact to serve the existing house. He said that the Subdivision Regulations say that all lots are to be accessed from an interior road. He said that Lot 1 will access off the same driveway and the developer is not trying to avoid road construction by requesting the driveway variance.

(ii) Public Comment

There was none.

(iii) Board Discussion and Questions

**Lori** asked what improvements were required on Stevensville Airport Road.

**Gordon** said that only pro-rata is required.

**Tristan** noted that the regulations only require pro-rata for external roads, but the internal road will have to be paved.



## Montana Fish, Wildlife & Parks

EXHIBIT A-2

Region 2 Office  
3201 Spurgin Road  
Missoula, MT 59804-3099  
406-542-5500  
September 20, 2005

Becky Weaver  
Professional Consultants, Inc.  
PO Box 1750  
Missoula, MT 59806-1750

Dear Ms. Weaver:

Reference: Roger Russ--Proposed minor (3 lots on 22.9 acres) subdivision, east of  
Stevensville

We have reviewed the preliminary plat, topographic map and project overview for this proposed subdivision, and our comments follow.

This proposed subdivision is in the eastern foothills of the Sapphire Mountains, and numerous wooded draws and riparian areas associated with Iron Cap, North Fork Burnt Fork and Mill Creeks are nearby. (North? Burnt Fork Creek appears to be about 100 feet outside the southwest corner of this subdivision.) There is a good possibility of human/wildlife interactions at this location. In particular, wildlife such as white-tailed, coyote, fox, skunk and magpie could be found in the area, as well as occasional black bear and possible mountain lion. Numerous small mammal and bird species could be found nearby, as well as nesting birds. We recommend that "living with wildlife" issues be conveyed as a development covenant to residents in this subdivision, in order to help them deal with and avoid potential wildlife issues.

Attached is our recommended version of such covenants. Thank you for providing the opportunity for MFWP to comment on this subdivision.

Sincerely,

/s/ Mack Long SDR

Mack Long  
Regional Supervisor

ML/sr

C: Ravalli County Planning Department, Attn: Kelli Zittergruen, 215 S. 4 St., Ste. F, Hamilton, MT 59840

*Recommended Development Covenant for Roger Russ subdivision, suggested by Montana Fish, Wildlife & Park; Missoula; September 20, 2005*

**Section \_\_: Living with Wildlife**

Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the presence of wildlife such as deer, elk, bear, mountain lion, coyote, fox, skunk, raccoon and magpie. Contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife." Alternatively, see the Education portion of FWP's web site at [www.fwp.mt.gov](http://www.fwp.mt.gov).

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

1. There is high potential for **vegetation damage by wildlife, particularly from deer** feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be aware of this potential damage. They should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Homeowners should consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
2. **Do not feed wildlife** or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to provide supplemental feed attractants if it results in a "concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.
3. **Pets** must be confined to the house, in a fenced yard, or in an outdoor kennel area, and not be allowed to roam as they can chase and kill big game and small birds and mammals. (This also helps protect pets from becoming prey for wildlife.) Under current state law it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124). **Pet food and livestock feed** should be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as raccoons, bears, mountain lions, and skunks. **When feeding pets or livestock** do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.

4. **Garbage** should be stored in secure animal-resistant containers or indoors to avoid attracting wildlife such as bears. If stored indoors, do not set garbage cans out until the morning of garbage pickup.
5. **Barbecue grills** should be stored indoors. Keep all portions of the barbecues clean. Food spills and smells on and near the grill can attract bears and other wildlife.
6. Consider **boundary fencing** that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence.
7. **Gardens and fruit trees** can attract wildlife such as deer and bears. Keep the produce and fruit picked and off the ground, because rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
8. **Birdseed** is an attractant to bears. If used, bird feeders should: a) be suspended a minimum of 20 feet above ground level, b) be at least 4 feet from any support poles or points, and c) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
9. **Compost piles** can attract skunks and bears. If used they should be kept indoors or built to be wildlife-resistant.
10. **Apiaries (bee hives)** could attract bears in this area. If used, consult Montana Fish, Wildlife & Parks or the U.S. Fish & Wildlife Service for help in planning and constructing an apiary system that will help deter bears.

## EXHIBIT A-3

### EASEMENT AGREEMENT

This Agreement is made this 9<sup>th</sup> day of June, 2004, between BITTER ROOT IRRIGATION DISTRICT, of 1182 Lazy J Lane, Corvallis, Montana 59828, hereinafter referred to as "Grantor", and BEVERLY A. CLAGETT, of 851 Middle Burnt Fork Road, Stevensville, Montana 59870, hereinafter referred to as "Grantee".

Grantor hereby grants and conveys to Grantee, a non-exclusive easement for the construction, erection, repair and maintenance of a bridge and for roadway purposes across the said bridge and the lands of Grantor which easement shall be sixty (60) feet in width. The easement shall be located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 29, T9N, R19W, P.M.M. and the easterly edge of said sixty (60) foot easement shall be located approximately along the easterly boundary line between Grantee's tract of land in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 29, T9N, R19W, P.M.M. according to Certificate of Survey No. 5747F (Book 227 Deeds, Pg 642) and the westerly boundary line of Grantee's tract of land in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 28, T9N, R19W, P.M.M. according to Certificate of Survey No. 5896-R (Book 231 Deeds, Pg 702). The said easement shall extend in a generally south to north direction over and across the lands of Grantor and its canal located thereon.

The purpose of this easement agreement is to provide access to Grantee's property lying north and south of Grantor's canal.

The easement is for the benefit of Grantee's tract of land in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 29, T9N, R19W, P.M.M. according to

*Ret. Beverly Clagett  
851 Middle Burnt Fork Rd  
Stevensville, MT 59870*



Certificate of Survey No. 5747F (Book 227 Deeds, Pg 642) and the Grantee's tract of land in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 28, T9N, R19W, P.M.M. according to Certificate of Survey No. 5896-R (Book 231 Deeds, Pg 702).

Any bridge located upon this easement and across Grantor's irrigation ditch, shall be the sole property of Grantee and Grantor shall have no obligation or responsibility for its use, design, construction, repair or maintenance. The use of the roadway across Grantor's property and the bridge across Grantor's irrigation ditch shall not hinder or interfere in any way with the use by Grantor of its property and irrigation ditch. No bridge shall be constructed or replaced upon this easement without the prior approval of the Grantor as to its location and design. As part consideration for the grant of this easement, Grantee assumes the risk of the use of said easement and any roadway or bridge that Grantee may erect or construct upon the said easement and hereby covenants and agrees that it will not sue or bring any other kind of legal action against Grantor arising from the grant of this easement or the use of the easement or any structure erected thereon by Grantee.

This Easement Agreement shall be binding upon and inure to the benefit of the heirs and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

BITTER ROOT IRRIGATION DISTRICT

  
ROBERT J. NICHOLSON, Chairman

State of MONTANA       )  
                              : ss.  
County of Ravalli       )

On this 15<sup>th</sup> day of June, 2004, before me, a Notary Public for the State of Montana, personally appeared ROBERT J. NICHOLSON, Chairman of the Board of Directors for the BITTER ROOT IRRIGATION DISTRICT, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he did execute the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.



ELAINE CULLETTO (*Elaine Culletto*)  
Notary Public for Montana  
Residing at: HAMILTON  
My Commission expires: 2-1-06

  
BEVERLY A. CLAGETT

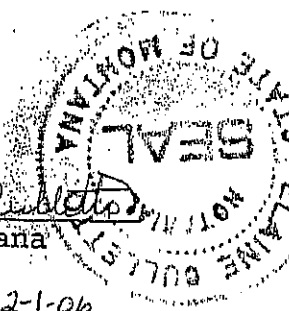
State of MONTANA       )  
                              : ss.  
County of Ravalli       )

On this 9<sup>th</sup> day of June, 2004, before me, a Notary Public for the State of Montana, personally appeared BEVERLY A. CLAGETT, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she did execute the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

(SEAL)

Elaine Culletto (Elaine Culletto)  
Notary Public for Montana  
Residing at: Hamilton  
My Commission expires: 2-1-06



Superintendent  
Dennis Kimzey  
Ext. 138



## Stevensville Public Schools

300 Park Avenue  
Stevensville, MT 59870  
Phone: 406-777-5481  
Fax: 406-777-1381



Clerk/Business  
Manager  
Bill Schiele  
Ext. 139

Tristan Riddel, Planner  
Ravalli County Planning Department  
215 South 4<sup>th</sup> Street, Suite F  
Hamilton, MT 59840

RECEIVED

AUG 21 2006  
10-06-08-1323  
Ravalli County Planning Dept.

August 17, 2006

Tristan,

Thank you for sending information on the 4-lot, 22.85 acre Roger Russ subdivision. Our Stevensville Public Schools can absorb the additional 4.5 youngsters, as well as provide school bus service. Please keep in mind our school district buses do not travel on roadways not maintained by Ravalli County or the State of Montana.

Sincerely Yours,

Dennis Kimzey, Superintendent  
Stevensville Public Schools

OCT 04 2005

Ravalli County Planning Dept.  
FL-05-10-1835



Environmental Health  
215 South 4<sup>th</sup> – Suite D  
Hamilton, MT 59840  
(406)375-6268 FAX (406)375-2048

MEMORANDUM

TO: Ravalli County Planning Department

FROM: Morgan T. Farrell, R.S., Environmental Health

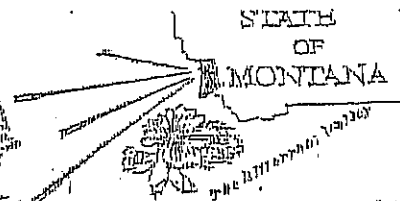
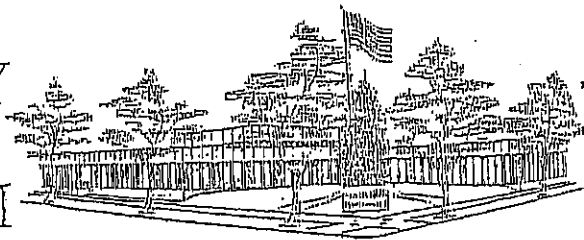
DATE: 10-3-05

RE: Roger Russ Subdivision

The Ravalli County Environmental Health Department has received the above-referenced proposal for review. Based on the information provided, the application appears to be sufficient for subdivision review. The Sanitation in Subdivision review will be completed in accordance with the contract with the Department of Environmental Quality. Additional questions or comments may be required based upon the continued review of this file and the content of future submittals.

# EXHIBIT A-6

COUNTY  
OF  
RAVALLI



Hamilton, Montana 59840

2004-04-06-876

Ravalli Co. Planning Office

RAVALLI COUNTY BOARD OF HEALTH  
215 S. 4<sup>th</sup> Street, Suite A  
Hamilton, MT. 59840

RECEIVED  
JUN 23 2004

June 23, 2004

Road Standards Committee  
C/O Ravalli County Planning Department

RE: Board of Health's Concerns for Road Standards

The Board of Health met in regular session on this date of June 23, 2004. In a discussion of air quality and roads, the Board of Health unanimously agreed that air quality and road safety are of paramount concern in the development of any road standards.

For the Board of Health:

Roger W. DeHaan  
Roger DeHaan, Member

Carlotta Grandstaff  
Carlotta Grandstaff, Member

Greg Chilcotti  
Commissioner Greg Chilcotti, Chairman

## EXHIBIT A-7

Memo to: Ravalli County Commissioners  
From: Ravalli County Health Board  
Re: Proposed new County road regulations  
Date: April 4, 2005

Various research studies show a strong link between air borne dust particulates and human health problems, including emphysema, asthma and others. For further details, please see the article (and 72 referenced articles) from the American Academy of Pediatrics, 2004, "Ambient Air Pollution: Health Hazards to Children."

In Ravalli County, even though there is limited air monitoring we are able to do, it is clear that sometimes we have excessive particulate matter (mainly road dust) in our air. Additionally, citizens often complain to County and State agencies about specific road dust problems in certain areas.

Because of this, the Health Board strongly urges the Commissioners to include mandatory dust control measures in any road regulations for the County.

All new roads, including those in subdivisions, should be paved, or treated with dust suppressant such as magnesium chloride, at the time of construction. If the magnesium chloride option is chosen, which requires reapplication every other year, owners must provide sufficient bonding or financial guarantee to insure that the work will be done for an extended period such as 20 or 30 years.

For existing roads owned by the County, we recommend that the very first budget priority be to apply dust palliative on all roads. This means that ALL County roads should have a graded magnesium chloride surface before any road is given additional budget allocation for widening, paving etc.

We believe that these measures, if implemented, will significantly help the health condition of all citizens of Ravalli County.

Thank you for considering and including these provisions in the new road regulations.

Respectfully submitted by the Ravalli County Health Board:

Mr. Greg Chilcott, Ravalli County Commissioner

Dr. John Swanson, M.D.

Dr. Ellyn Jones, M.D.

Mr. Roger W. De Haan, P.E.

